

Remarks

Applicant would like to thank the Examiner for the courtesies shown to Applicant's representatives during the interview held on March 2, 2010. The following remarks commemorate the substance of the interview and are in response to the Action mailed November 24, 2009.

Claims 1-3 and 7-18 are pending with entry of this Amendment and stand rejected.

Claims 4-6 were cancelled without prejudice in another paper.

The Section 103 Rejections

On pages 2-4 of the Action, the Office improperly rejected Claims 1-3, 7 and 17-18 as being obvious in view of Agostino and Nelson. As discussed during the interview, Agostino cannot properly be cited as a reference and/or combined with Nelson, and it was agreed upon by the Examiner that the rejection premised upon Agostino would be withdrawn.

1. Nelson expressly teaches away from a combination with Agostino.

As discussed during the interview, Agostino uses a mobile diagnostic unit (MDU), that is, a laptop computer, combined with a cellular phone (MU) to collect forward link (downlink) data. Agostino uses a mobile telephone exchange (MTE) or base station to collect reverse link (uplink) data. Agostino then utilizes data gathered by both the MDU and MTE to optimize an RF system.

Agostino specifically states that "it is extremely important for engineers to analyze both the forward link data collected by the MDU and the reverse link data saved...by the MTE." See 1:50-54. "Only by studying details of this information, including communication messages and parametric data with aligned time stamps attached thereto from the perspectives of both the MDU and MTE, are the engineers able to tell what has happened during the earlier communication that has caused unsatisfactory performance of

the network...". See 1:59-62. Thus, Agostino specifically requires drive testing for the collection of downlink data.

This is confirmed in Agostino in at least two instances. First, at 8:36-44, Agostino distinguishes itself from conventional systems requiring two engineers, one drive testing and a second engineer at the MTE by concluding that the invention eliminates the need for both engineers. Indeed, Figure 8 provides a map view indicating the route the drive testing engineer has actually traveled using an MDU in Agostino's invention. See Fig. 8 and 8:64-9:2. Thus, Agostino eliminated the need for the one engineer at the MTE but still requires the drive testing engineer.

Nelson's teachings removes Agostino as a combinable reference. For example, Nelson expressly criticizes the limitations of conventional systems such as Agostino (e.g., a CPU or laptop in combination with a cellular phone) by stating that "this is an expensive and inefficient system because it requires a PC separate from the wireless device and allows for only one call to be analyzed at a time." See 4:52-55. This express teaching away from the Office's proposed combination must be considered by the Office and cannot be (but was) ignored. See MPEP § 2141.02(VI) and § 2145(X)(D)(1)-(2). Hence, the agreement by the Office to withdraw the current rejection premised upon Agostino.

Even if this were not the case, as discussed during the interview, each of the independent claims (Claim 1, 17 and 18) require that each of the steps of the claimed subject matter are performed without drive testing. This element, alone, would act to remove Agostino as a properly cited reference.

2. No properly cited references of record teach each and every claimed element, alone or in combination.

As discussed during the interview and above, Agostino cannot properly be cited as a reference against the claimed subject matter and certainly cannot be combined with Nelson to teach the claimed subject matter.

Thus, left with Nelson, the Office does not have any references of record that teach each and every claim element of Claims 1, 17 and 18. As discussed during the interview, there simply is no disclosure or teaching in Nelson of at least:

“forming data pairs by identifying the gathered geolocation data and the gathered signal strength data corresponding to the same mobile units and by selecting the geolocation data and the measured signal strength data received within sufficiently close temporal proximity to a reference time stamp to identify data from the same mobile unit; and

generating a set of data pairs correlating measured signal strength values to specific geographic locations throughout said wireless system,”

See Claim 1. Independent Claims 17 and 18 provide similar elements.

To the contrary and as discussed during the interview, Nelson discloses gathering uplink call data parameters (*see* 4:13-21) and determining a location of a wireless device using geolocation information detected by a base station or using data measured by the wireless device (*see* 3:28-52 and 3:64-67, respectively). This location of the wireless device is then matched with the uplink call data parameters to monitor performance of a cell. *See* 4:66-5:1. Nelson is completely silent with regard to the claim elements recited above. Indeed, during the interview, the Office admitted as much but instead attempted to apply the – current ordinary skill – of one in the art to conclude the claimed subject matter was obvious. This analysis performed by the Office is decidedly improper.

As the Office is well aware, any judgment based upon obviousness must take into account the level of ordinary skill in the art at the time the claimed invention was made. *See* MPEP § 2145(X)(A). As discussed during the interview, the current rejection provided a conclusion of obviousness based upon improper hindsight reasoning. Thus, as agreed upon during the interview, the rejection of independent Claims 1, 17 and 18 based on Agostino in view of Nelson should be withdrawn.

Reconsideration and withdrawal of the rejection of Claims 1, 17 and 18 are respectfully solicited. As Claim 1 is in condition for allowance and Claims 2-3 and 7-16

depend therefrom, Applicant submits Claims 2-3 and 7-16 are allowable by virtue of their dependency alone without addressing the additional patentable subject matter therein. Reconsideration and withdrawal of the rejection of Claims 2-3 and 7-16 are respectfully requested.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and a notice to this effect is respectfully requested.

The Office is requested and hereby authorized to charge any required extension-of-time fees against Deposit Account Number 04-1679 to Duane Morris LLP.

If any point remains that is deemed best resolved through a telephonic conversation, the Office is hereby requested to contact the undersigned directly.

Respectfully submitted,

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